



JERRY SANDERS
MAYOR

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Honorable Robert J. Trentacosta
Presiding Judge
San Diego Superior Court
220 West Broadway
San Diego, CA 92101

Subject: 2011/2012 San Diego County Grand Jury Report: "Citizens' Review Board on Police Practices"

Dear Judge Trentacosta:

Pursuant to California Penal Code Section 933.05(a), (b), and (c), the City of San Diego provides the following responses to the findings and recommendations included in the above referenced Grand Jury Report. Clarifications to some facts presented in the Grand Jury Report are included in this response.

BACKGROUND

The City Charter grants the Mayor the exclusive authority to create and establish the Citizens' Review Board on Police Practices (CRB) and the rules and regulations to carry out its functions. The purpose of the CRB is to empower an independent citizens' group to assure the public that complaints brought against San Diego Police Officers are investigated thoroughly, fairly, and impartially.

The California Penal Code requires law enforcement agencies to have a process in place to investigate complaints against officers. Proposition G, approved by voters in November 1988, established the CRB as a monitoring model of civilian oversight and did not confer any independent subpoena or investigation powers to the board. The CRB relies on the investigations performed by the San Diego Police Department's Internal Affairs Division (IA). The CRB's role is to provide firm, fair, consistent internal reviews of IA investigations in order to help the department better provide fair and consistent law enforcement. The San Diego Police Chief notes that it is in the department's best interest to have an effective CRB.

The CRB also recommends and advocates for policies which promote fair and humane policing of the city. Over the years the CRB has been instrumental in helping shape and change police policy with very recent accomplishments including influencing SDPD vehicle towing policy – making it less likely for citizens to have their car towed during traffic citations and arrests – and methods of counting detainee/arrestee money and property – making for a more reliable and trustworthy process. The professional and cooperative relationship that has been established

between the CRB and the SDPD over the years has produced many positive changes in police policies and procedures for the betterment of the community. Policies that have been positively impacted as a result of the case review process include pursuit, prisoner restraint, interpreters, officer off-duty/on-duty responsibilities, money handling and use of force.

The CRB is a diverse group of volunteers providing impartial oversight of investigations and responses to citizens who have voiced their complaints regarding the conduct of officers. The CRB is comprised of 23 dedicated citizen-volunteers who represent a diversity of San Diegans with respect to culture, occupation, physical ability, sexual orientation, ethnicity, socio-economics, and age. Volunteers are rigorously trained so cases are reviewed with knowledge and skill. The public can have confidence that the CRB is interested in a fair and complete review process.

The CRB has adopted the National Association of Civilian Oversight of Law Enforcement (NACOLE) Code of Ethics and uses this as a standard of conduct. Adopting standards of personal integrity, independent and thorough oversight, transparency and confidentiality, respectful and unbiased treatment, outreach and relationships with stakeholders, agency self-examination and commitment to policy review, professional excellence, and primary obligation to the community above self-interest, the CRB strives to earn the community's trust through a firm commitment to the CRB's mission and to the public good.

FACTS and FINDINGS

Fact: CRB membership interview and select candidates for prospective board members and then recommend them to the Mayor for appointment.

Finding 01: This process allows bias, prejudice, and other personal feelings of the interview committee members to influence their recommendations.

Disagree. The panel which interviews candidates is comprised of the CRB Chair, the executive director, the Chair of the Recruitment and Retention Committee, and two additional community members who have familiarity with the CRB. Panel members represent a diverse perspective of the community.

The CRB strives to attract as diverse a group as possible to serve on this board. Annually, the Recruitment and Retention Committee develops a strategy to capture the attention of citizens. Press releases are sent and calls are made to newspapers, council offices, non-profit organizations, advisory groups, advocacy groups, and service organizations to solicit interest.

All interested persons are screened for time availability and interest in the mission of the board. Interviews are conducted with all interested candidates. The interview committee uses a consistent series of questions, approved by the Mayor's Office and a standard response format approved by the Human Resources Department that assesses knowledge, skills and abilities

(KSAs) based on the requirements of the job. Bias, prejudice and other personal feelings are not selection factors. The interview panel is responsible for gathering information to determine if the applicant has the requisite skills to conduct reviews of IA cases with fairness, accuracy, and thoroughness.

After the interviews the candidates' information is sent for a background check by SDPD to ensure they have no "wants or warrants". CRB members have access to confidential police personnel records and as such must undergo a level of scrutiny commensurate with this access. Candidates passing this check are sent to the Mayor's Office at which time the Mayor's Office may further review the qualifications of the candidate and accept or reject the recommendations of the CRB. The Mayor's Office has sole discretion regarding the selection of prospective members to serve on the CRB.

Fact: There is a lack of decorum among Board members in open sessions when members of the public are present.

Fact: The lack of decorum has created an atmosphere of fear and intimidation among some Board and prospective members.

Fact: Lack of decorum is in direct conflict with the Board's own policies and procedures-by-laws.

Mayor's Clarification: CRB members do engage in active discussions about serious and sensitive issues, but not in the types of exchanges the Grand Jury claims. As is the case with many Boards, at any given time there are a small number of dissatisfied members.

Finding 02: The lack of decorum among Board members has contributed to a high turnover of prospective members and has affected the Board's ability to function properly.

Partially Disagree. The CRB is functioning properly – teams review and write cases, present them to the entire CRB for discussion and resolution, conducts business in open session meetings, hears comments from the public, votes on policy recommendations to SDPD, recruits new prospective members, and carries on the business of the board.

There is no lack of decorum among Board members in open session when members of the public are present. The CRB listens respectfully to all public comments and conducts its business in a straightforward manner. In the past, there have been times when a lack of decorum in closed sessions has occurred during discussion of individual cases. One member in particular was placed on probation for aggressive, argumentative, mean-spirited questioning and no longer serves on the Board. The CRB seeks continuous improvement in its effectiveness and strives to conduct its deliberations with diligence, integrity, objectivity, and respect for all opinions.

Prospective member turnover is due to many reasons including time and availability conflicts, and the amount of time spent waiting before appointment. Some may find the discussions confrontational and not their style. Recent prospective members left because they moved out of town and because they needed to take care of family illnesses.

Finding 03: CRB leadership is weak, ineffectual, and unresponsive.

Disagree. Staff to the CRB is comprised of a half-time executive director appointed by the Mayor and a quarter-time complaint coordinator. The executive director has worked diligently to serve the needs of the board and the majority of board members praise her skill and commitment. A few board members have expressed extensive and on-going concerns. The executive director has met with and responded to each of the concerns raised. Disagreement with the answers and resolution does not mean the issue was not addressed.

The CRB is run by a Chairperson, a board member elected to that position by the entire board. Board leadership positions also include a first and second vice chair. The executive director provides guidance to the leadership team as appropriate. An additional staff position (management analyst) has been added for Fiscal Year 2013 to allow for increased responsiveness.

Finding 04: A faction of Board members is allowed to control Board activity.

Disagree. There are 23 independent-minded members on the CRB. As laid out in the by-laws, the full membership annually elects a Chair, 1st Vice Chair, and 2nd Vice Chair. There is a two year term limit for each of these positions. The Executive Committee is comprised of these elected officers plus the Committee Chairs of the four operating committees – Outreach, Policy, Recruitment and Retention, and Training. The committees have wide latitude in the issues and activities they undertake. The Executive Committee guides the work of the board and sets agendas for the monthly open session meetings. Last year, the CRB Chair appointed the members who were most vocal in their critique of a closed leadership group as committee heads. As Committee Chairs, these leadership positions allow for influence on the direction and progress of the board. In addition, all board members may submit agenda items for open session agendas per the by-laws. All CRB members are eligible to vote on all action items brought before the CRB.

Finding 05: If CRB leadership were stronger and more willing to be involved, decorum and factions among Board members could be controlled.

Partially Disagree. The role of the CRB leadership is not to control the board members but to ensure a balance between full and open discussions, including differences of opinion, and the goal of running the meeting efficiently. The CRB has adopted ethical standards and decorum standards and are all personally responsible to adhere to these standards.

Finding 06: IA personnel attendance in closed session inhibits the CRB from being independent, fair, and impartial.

Disagree. The CRB functions as an independent, fair, and impartial body making its own assessment regarding the findings in a case. However, CRB members can interact with IA, at the CRB member's request, during the review and deliberation process. These professional discussions and disagreements are an integral part of the exchange between board and department. Through the interactive process, fair case findings and improved policies result.

IA is in attendance in closed session meetings to answer any questions concerning police procedures or policies that the team cannot answer. This helps the CRB efficiently process complaints. To perpetuate the notion that IA bullies members into changing their minds damages the reputation of all the men and women who serve the CRB and who can formulate and defend decisions other than those determined by IA. That said, IA's input in a closed session meeting should be limited to responding only when called upon by the CRB Chair. The CRB Chair should strongly enforce and monitor IA's response and call upon IA when necessary.

Even though staff disagrees with the allegation made in Finding 06, staff will work with the Board to explore the possibility and practicality of having IA not attend closed session discussions, but rather be immediately available to be called into closed session to respond to questions that may arise.

Finding 07: Interference by IA personnel during the review process prohibits the three-member team from making independent, fair, and impartial reviews of IA reports.

Disagree. IA does not "interfere" during the review process. Every report by every CRB team is independent, fair, and impartial. IA meets with teams at the team's request. Debate and discussion between IA and the CRB team does occur and should be expected. There is an interest in working toward findings that both the CRB and IA can support – the CRB uses this as leverage to make changes that reflect their assessment of the situation. In the monitoring model of oversight it is the board's responsibility to provide fair and consistent reviews of Internal Affairs' investigations, to identify adequate versus inadequate investigations, and direct the department to take corrective action in order to improve.

RECOMMENDATIONS

12-29: Establish an interview committee, independent from the CRB, for the selection of prospective CRB Board members.

Response: The current process has been in place since 1998 and has provided a diverse group of dedicated and talented board members. This recommendation to exclude the CRB from the

process will not be implemented. The Mayor will, however, ask that the names of the panel members be reviewed by the Mayor's Director of Boards and Commissions before interview sessions are conducted to ensure impartial community and diversity representation is included.

12-30: Set questions to be determined by the Mayor; which committee will then make recommendations to the Mayor.

Response: This recommendation will not be implemented because it is not warranted. The current process has produced a diverse and competent Board and there is no evidence it does not work well. Once vetted, candidate names are submitted to the Mayor with the panel's recommendations and/or reasons for non-selection. This procedure is satisfactory.

12-31: Select a three-member team, independent of the CRB, who will conduct an investigation and evaluate the current CRB Executive leadership to determine if replacement is needed.

Response: This recommendation will not be implemented because it is not warranted. The immediate supervisor of the executive director has responsibility for conducting the performance review. A management analyst position has been added in the Fiscal Year 2013 budget which will increase the ability of staff to be responsive to CRB needs.

12-32: Immediately instruct the Chief of Police to ensure that IA personnel stop attending CRB closed sessions.

Response: This recommendation will be taken under consideration, but may not be implemented if it is determined that the allegations are not founded or that it creates greater inefficiencies or ineffectiveness in the process. Police personnel records are required in closed session meetings. IA is the custodian of records and must be present or nearby at all times. In addition, there has been a significant benefit in IA's presence as they listen to CRB members question and discuss a case. When a CRB team must conclude that although questionable or concerning, the officer's behavior was within policy, the department is influenced by hearing the frustration and critique contained in the board's discussion of the case. The effectiveness of both the Police Department and the CRB is increased as a result of this arrangement.

12-33: Instruct the Chief of Police to ensure that IA personnel stop interfering with the CRB teams during their file reviews.

Response: This recommendation will not be implemented as it is not warranted. The recommendation suggests that there is regular and continual interference by IA in CRB file review. The Mayor and/or Chief of Police will appropriately discipline IA whenever substantiated allegations are brought against IA by the CRB. In an extreme sense of

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cautiousness regarding protocol, the Chief of Police and the Mayor will work together to remind both Internal Affairs and CRB teams about their role in the review process.

12-34: Reduce the number of consecutive years a Board member may serve from eight to four to encourage ethnic and economic diversity.

Response: This recommendation will not be implemented as it is not warranted. Ethnic and economic, as well as the broad spectrum of diversity represented in the community, will be achieved through a more robust recruitment process and adjustment of hours for board meetings rather than by reducing the terms members are allowed to serve. An effective outreach campaign will include proactive recruitment in underserved communities and creative strategies across San Diego. The San Diego City Charter (Section 5) allows for members of boards and commissions to serve an eight-year term. The Mayor has a strong commitment to diversity throughout the City and will continue to ensure that the City's boards and commissions are well represented from a broad spectrum of the community.

Please contact Scott Chadwick, Human Resources Department Director at 619-236-6313 if you have any questions.

Sincerely,



JERRY SANDERS
Mayor

cc: San Diego County Grand Jury
Chief Operating Officer
Assistant Chief Operating Officer
City Clerk
Human Resources Department Director
Administration Department Director